

Remarks

The Office Action has been carefully reviewed and this Response is prepared in view of the Examiner's comments in the Action. Applicant appreciates the attention of the Examiner to the application in the Office Action and the Interview of February 4, 2004. Applicant also acknowledges and appreciates the Examiner's interview summary of February 8, 2005. Included in these remarks are new arguments regarding the lack of enablement of the Stang reference and, in the alternative, the lack of anticipation or obviousness of claims by the Stang reference. In light of the following arguments Applicant believes all claims are in condition for allowance and requests early favorable action.

In the action claims 1-19 and 55-89 are pending. Claims 1-11, 18, 55, 75 and 81-86 stand rejected under 35 USC § 102(b) as anticipated by Stang. Claims 12-17, 19, 56-74, 76-80 and 87-90 stand rejected under 35 USC §103 as obvious in light of Stang.

The Stang reference is a research study on the effects of plant growth regulators on cranberries from the University of Wisconsin - Madison department of Horticulture. In order to be utilized as anticipating the reference must enable one of skill in the art to understand and practice the invention. *Paperless Accounting, Inc. V. Bay Area Rapid Transit sys.*, 804 F.2d 659, 665 (Fed. Cir. 1986). The Stang reference is so rife with inconsistencies and impossible mathematics that it cannot be found to be enabling; rather one of skill in the art would only be confused as to its teaching following a thorough reading of the entire reference.

The Examiner's rejection stems primarily from the "Mean fruit weight (g)" column shown in Table 1 of the reference. In that Table the mean fruit weight when GA₃ is used as a growth regulator is .47 and .53 when GA₄₊₇ is utilized. Therefore it is the Examiner's contention that this teaches on of skill in the art a method of producing berries wherein most of the berries have a mature mass of less than 0.6 grams. From a first glance at the results this might seem a reasonable possibility. However, a closer examination of Table 1 and Table 3 shows that this must represent an error in the reference at some level. It is this error that makes the reference not enabling and therefore not valid prior art.

Table 1 deals with 1986 results and shows three berry groupings based on size: 0.5, 0.6-1.0 and >1.0. In relation to the use of GA₃ there are no berry weights that could fit the indicated distribution and result in the mean weight of 0.47. Therefore this indicates a basic error in calculation. Such an error should not be utilized to reject a patent application that is the result of valid and properly conducted research and testing. These erroneously low numbers are seen throughout the Mean Fruit Weight of Table 1 and are indicative of a basic calculation error on the part of the authors. To even begin approaching the number reported first it must be assumed that the 0.5 column truly means < 0.5. For example, in the case of GA₄₊₇, if all 7 berries in the 0.5 column weighed 0.1 and all 28 berries in the 0.6-1.0 column weighed 0.6 and all 5 berries in the >1.0 column weighed 1.1 it would result in a mean berry weight of 0.575. Even with such a statistically improbable distribution the result is still substantially above the 0.53 reported Mean Fruit Weight. While some of the numbers in the chart may be mathematically possible utilizing such a statistically improbable distribution, the numbers are clearly indicative of an error in reporting. Also confirming that the error is in the calculating of the mean and not the reporting of the distribution, the Results section states that "substantial numbers of berries were retained in the larger and medium size category with [GA₃ and GA₄₊₇]." This error is further reinforced when looking at the statistically feasible results is in Table 3.

Table 3 deals with 1987 results and utilizes the same three weight groupings seen in Table 1, however the Weight (g) column (assumed to be Mean Fruit Weight Column of Table 1) shows no number below 0.7g of mean weight. These mean weights correspond to statistically feasible weight distributions. For example, in the GA₃ regulator with 4 applications, if all 18 of 0.5 berries weighed 0.3g, all 22 of 0.6-1.0 berries weighed 0.8g and all 6 of the >1.0 berries weighed 1.3g (all about in the middle of the ranges) it would result in a average weight of 0.67g. In order to achieve the average reported therefore it could be assumed that some of the berries in >1.0 column are substantially larger than 1.3g, which is easily conceivable.

By comparing the results shown in Table 1 and Table 3 it is clear that some error has taken place in computations. Due to the complete uncertainty of where or how this error

occurred it is obvious that a person of skill in the art could not utilize the results of this testing to produce berries or develop a method for producing berries according to the current invention. Thus, the reference is not enabling, at least to the present invention, and therefore cannot be an anticipating reference.

In the alternative, even if the reference were in some way enabling it does not anticipate the claims. Claim 1 requires that "most of the cranberries have a mature mass of less than 0.6 grams." Nowhere in the Stang reference does it disclose that most of the cranberries of any test sample are less than 0.6 grams. In Table 1, some of the mean fruit weights are shown as less than 0.6 grams; however, in no weight distribution are more than 23% of the cranberries shown to be in the 0.5 column. This clearly and irrefutably shows that the Stang reference does not, even on its face, without making *any* assumptions about the work, method or accuracy of the author, show a method utilizing a plant growth regulator to grow a crop of cranberries wherein most of the cranberries are less than 0.6g.

In relation to claim 3, even if Stang were to disclose cranberries of less than 0.6 grams in Table 1, Table 1 shows 1986 results. All of the 1986 testing was completed by a method including three applications. *Stang* at 278. The only single applications disclosed in the testing are shown in Table 3 for 1987 wherein the lowest average weight shown resulting from a single application step is 0.7g. This combination, if Table 1 were to show berries of less than 0.6g, clearly teaches away from a one step application to achieve such results since then three applications would have accomplished the desired size and one application made the berries larger.

In relation to claims 14 and 15, the highest fruit set disclosed in the Stang reference is 57%. Such a disclosure cannot be utilized to make obvious fruit sets of 80 or 90% and simple experimentation would not achieve such a result.

In relation to claim 16 and 17, the Stang reference does not anticipate or make obvious the claims. Assuming the reference could enable a method of producing berries of less than 0.6g, the only method it could disclose is a method whereby all of the berries in the 0.5g category are 0.1g or less. Therefore most of the berries could not be between 0.2-0.6 or 0.3-0.5.

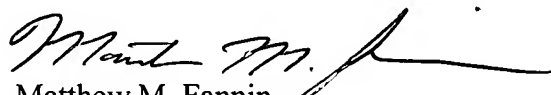
Claim 55 is not anticipated by Stang either. In no result in Stang are fruits larger and 1.0g excluded and there is no indication that further experimentation would have given such a result.

Claim 56-61, 71, 72, 86 and 87 are traversed even if Stang is found to be enabling for the reasons outlined above. The remainder of the claim depend from claims that should be traversed and therefore also are in condition for allowance.

Applicant firmly believes that the Stang reference should not be found to be enabling due to its errors and inconsistencies. In the alternative, the claims and argued above are not anticipated or made obvious by Stang. Applicant believes that all claims, as previously amended, are in proper form for allowance. Early favorable action is solicited.

The Patent Office is hereby authorized to debit \$60 from deposit account 10-0270 to cover the one-month extension fee. Applicant believes that no further fees are due with the present response. However, if any further fees are due, please debit the deposit account and inform the undersigned.

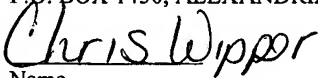
Respectfully submitted,


Matthew M. Fannin
Registration No. 51,268

Dated: March 3, 2005
Jansson, Shupe & Munger, Ltd.
245 Main Street
Racine, WI 53403-1034
Attorney Docket No. RBC-101US

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: MAIL STOP AMENDMENT, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on March 3, 2005.


Name

 3/3/05
Signature Date